

**COMMISSION ON STATE MANDATES**

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June 18, 2004

Ms. Pamela A. Stone  
DMG-Maximus  
4320 Auburn Blvd., Suite  
2000  
Sacramento, CA 95841

Ms. Ginny Brummels  
State Controller's Office  
Division of Accounting and  
Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Mr. Keith Gmeinder  
Department of Finance  
915 L Street  
Sacramento, CA 95814

*And Affected State Agencies and Interested Parties (See Enclosed Mailing List)*

**Re: Draft Staff Analysis and Proposed Parameters and Guidelines**

*Peace Officer Personnel Records: Unfounded Complaints and Discovery, 00-TC-24*  
City of Hayward and County of San Mateo, Claimants  
Statutes 1978, Chapter 630, et al.

Dear Ms. Stone, Ms. Brummels, and Mr. Gmeinder:

The draft staff analysis and proposed parameters and guidelines are enclosed for your review and comment.

**Written Comments**

Any party or interested person may file written comments on the draft staff analysis and proposed parameters and guidelines by **July 2, 2004**.

Unit Cost Methodology

Please evaluate the proposed reimbursable activities to determine if they could be reimbursed under a unit cost methodology. If a unit cost methodology would be appropriate, please request a prehearing conference be set for July 28, 2004, and request postponement of this item for the July hearing.

You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties and to be accompanied by a proof of service. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

**Hearing**

This matter is tentatively set for hearing on **July 29, 2004** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

June 18, 2004

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**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions, please contact Tina Poole at (916) 323-8220.

Sincerely,

NANCY PATTON  
Assistant Executive Director

Enclosures

**ITEM**  
**PROPOSED PARAMETERS AND GUIDELINES**  
**DRAFT STAFF ANALYSIS**

Education Code Section 1043, subdivision (a)  
Penal Code Sections 832.5, subdivisions (b) and (c), and  
832.7, subdivisions (b) and (e)

Statutes 1978, Chapter 630  
Statutes 1994, Chapter 741

*Peace Officer Personnel Records (00-TC-24)*

City of Hayward and County of San Mateo, Claimants

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**EXECUTIVE SUMMARY**

The Executive Summary will be included with the Final Staff Analysis.

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## Claimants

City of Hayward and County of San Mateo

## Chronology

- 06/29/01 Claimant, City of Hayward files test claim *Unfounded Complaints Against Peace Officers* (00-TC-24) and claimant, County of San Mateo files test claim *Discovery of Peace Officer Personnel Records* (00-TC-25)
- 09/13/02 Claimant, Santa Monica Community College District (District), files test claims on behalf of K-14 school district employers of peace officers: *Unfounded Complaints Against Peace Officers, K-14* (02-TC-08) and *Discovery of Peace Officer Personnel Records, K-14* (02-TC-07)<sup>1</sup>
- 10/03/03 Commission on State Mandates (Commission) adopted Statement of Decision approving the City of Hayward and County of San Mateo claims and rejecting the Santa Monica Community College District claim
- 10/24/03 Claimant submitted Proposed Parameters and Guidelines
- 12/19/03 State Controller's Office (SCO) submitted comments
- 06/18/04 Commission staff issued Draft Staff Analysis and Proposed Parameters and Guidelines

## Background and Summary of the Claim

On October 3, 2003, the Commission on State Mandates (Commission) adopted the Statement of Decision for *Peace Officer Personnel Records: Unfounded Complaints and Discovery* (00-TC-24). The Commission found that Evidence Code section 1043, subdivision (a), Penal Code sections 832.5, subdivisions (b) and (c), and 832.7, subdivisions (b) and (e) constitute a new program or higher level of service and impose a state-mandated program on local agency employers of peace officers within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514.<sup>2</sup> Accordingly, the Commission approved this test claim for the following reimbursable activities:

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<sup>1</sup> On October 3, 2003, the Commission adopted its Statement of Decision finding that school districts are not eligible claimants for this program because forming a school district police department and employing peace officers is a discretionary activity on the part of all school districts. Pursuant to Education Code sections 38000 and 72330, school districts remain free to discontinue providing their own police department, and statutory duties that follow from discretionary activities do not impose a reimbursable state mandate.

<sup>2</sup> Exhibit A.

- Upon receipt of the notice that discovery or disclosure is sought of peace officer personnel records, the local agency served shall immediately notify the individual whose records are sought. (Evid. Code, § 1043, subd. (a).)<sup>3</sup>
- Retain complaints against peace officers by members of the public, and any reports or findings relating to these complaints, either in the officer's general personnel file or in a separate file, for an additional three years (a higher level of service above the two-year record retention requirement pursuant to Government Code sections 26202 and 34090.) Complaints found to be frivolous, unfounded, or exonerated shall not be maintained in that officer's general personnel file, but shall be retained in other, separate files. (Pen. Code, § 832.5, subds. (b) and (c).)<sup>4</sup>
- Release to the complaining party a copy of his or her own statements at the time the complaint against the peace officer is filed. (Pen. Code, § 832.7, subd. (b).)<sup>5</sup>
- Provide written notification to the complaining party of the disposition of the complaint against the peace officer within 30 days of the disposition. (Pen. Code, § 832.7, subd. (e).)<sup>6</sup>

The Commission concluded that Evidence Code sections 1044, 1045, 1046 and 1047, Penal Code section 832.8, and none of the additional activities or costs claimed for receiving, responding to, or defending against a discovery motion, or investigating complaints against peace officers, constitute a new program or higher level of service within the meaning of the California Constitution, article XIII B, section 6.

The Commission also found that forming a school district police department and employing peace officers is a discretionary activity on the part of all school districts. Pursuant to Education Code sections 38000 and 72330, school districts remain free to discontinue providing their own police department, and statutory duties that follow from discretionary activities do not impose a reimbursable state mandate. Thus, the Commission concluded that school districts are not eligible claimants for the test claim statutes.

The Commission denied any remaining alleged costs or activities because they do not impose a new program or higher level of service, and do not impose costs mandated by the state.

## Discussion

Staff reviewed the claimant's proposal<sup>7</sup> and the comments received. Staff made non-substantive, technical changes for purposes of clarification, consistency with language in parameters and guidelines adopted since January 2003, and conformity to the Statement of Decision and

<sup>3</sup> As amended by Statutes 1978, chapter 630; test claim allegation filed June 29, 2001, reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).).

<sup>4</sup> As added by Statutes 1978, chapter 630; test claim allegation filed June 29, 2001, reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).).

<sup>5</sup> As amended by Statutes 1994, chapter 741; test claim allegation filed September 13, 2002, reimbursement period begins no earlier than July 1, 2001. (Gov. Code, § 17557, subd. (c).).

<sup>6</sup> *Ibid.*

<sup>7</sup> Exhibit B.

statutory language. Substantive changes were made to the following sections of the claimant's proposed parameters and guidelines:

### ***III. Period of Reimbursement***

In comments dated December 19, 2003, SCO requested that this section be modified to specifically state the period for eligible claimants to file reimbursement claims.<sup>8</sup> Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claims for this mandate were filed on June 29, 2001 and September 13, 2002. Therefore, costs incurred for compliance with Evidence Code section 1043, subdivision (a), and Penal Code section 832.5, subdivisions (b) and (c) are reimbursable on or after July 1, 1999, and costs incurred for compliance with Penal Code section 832.7, subdivisions (b) and (e), are reimbursable on or after July 1, 2001. Staff modified this section accordingly.

SCO also noted that under Government Code section 17561, subdivision (d)(1)(A), the time frame for submitting claims for reimbursement of initial fiscal year costs is 120 days from the issuance date for the claiming instructions, not 120 days of notification by SCO of the issuance of the claiming instructions. At SCO's request, staff modified this language accordingly. If the Commission adopts this language, it will be included in all future parameters and guidelines.

### ***IV. Reimbursable Activities***

SCO commented that the administrative activities of developing policies and procedures and training officers and staff should be classified as one-time activities. SCO also suggested language stating that training would be for district personnel who are required to implement the policies and procedures to be followed upon the receipt of a motion seeking discovery of the personnel records or records of citizens' complaints of a peace officer. Staff disagreed with the SCO finding that the approved reimbursable activities were required since January 1, 1979, for Evidence Code section 1043 and Penal Code section 832.5, and since January 1, 1995 for Penal Code 832.7. This is several years prior to the eligible reimbursement period. Therefore, policy updates and training should have already been implemented. Furthermore, training was not included as a reimbursable activity in the Statement of Decision nor is it required by statute. Therefore, staff deleted these activities.

In regards to the activity of maintaining complaints, SCO commented that "retaining" not "maintaining" the records is required. SCO declared that the records are kept for the duration of the required retention period and there is no maintenance needed. Staff found that retaining complaints is consistent with the language included in the Statement of Decision and made the modification requested by the SCO. SCO further requested that language specifying, "any reports relating to these complaints" be added to this activity as this was the language that was included in the Statement of Decision. Staff agreed with SCO and added this language.

Staff also found that retrieval and replacement of the records were not identified as reimbursable activities in the Statement of Decision, and deleted these activities.

For those activities required by statute, the SCO requested that a reference to the statutory requirement be added. In the Statement of Decision the statutory references for these activities was included. Therefore staff concurred with the SCO and added the references.

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<sup>8</sup> Exhibit C.

When an oral complaint is received, the claimant proposed that the cost of transcribing, typing or otherwise making a hard copy of the complaint is reimbursable. Staff found that taking complaints was not identified as a reimbursable activity in the Statement of Decision, and therefore deleted this language.

#### ***V. Claim Preparation and Submission***

The claimant proposed language that would allow a non-statistical time study to be used to fulfill the requirements of this section. SCO commented that since the time study issue is still pending, it should not be addressed until time study guidelines are released by SCO. Staff agreed and deleted this language. Staff also deleted the language regarding travel and training since these costs were not found to be reimbursable.

#### **Staff Recommendation**

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as modified by staff, beginning on page 6.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

**PROPOSED DRAFT PARAMETERS AND GUIDELINES,  
AS MODIFIED BY STAFF**

Evidence Code Sections 1043, subdivision (a)  
1044, 1045, 1056 and 1047

Penal Code Sections 832.5, subdivisions (b) and (c), and 832.7, subdivisions (b) and (c)  
and 832.8

~~As Added or Amended by Statutes of 1978, Chapter 630; Chapter 946, Statutes  
Of 1982; Chapter 549, Statutes of 1985; Chapter 685, Statutes of  
1988; Chapters 615 and 693, Statutes of 1989; Chapter 741,  
Statutes of 1994; Chapters 220 and 1108, Statutes of 1996; Chapter 25,  
Statutes of 1998; Chapter 971, Statutes of 2000; and Chapter 63,  
Statutes of 2002~~

Statutes 1978, Chapter 630  
Statutes 1994, Chapter 741

*Peace Officer Personnel Records: Unfounded Complaints and Discovery (00-TC-24)*

**I. SUMMARY OF THE MANDATE**

On June 29, 2001, claimant, City of Hayward (City), submitted a test claim alleging a reimbursable state mandate for employers of peace officers was imposed by amendments to Penal Code section 832.5. On the same date,<sup>9</sup> claimant, County of San Mateo (County), submitted a test claim alleging a reimbursable state mandate for employers of peace officers arising from additions and amendments to the Evidence and Penal Codes, including Penal Code section 832.5.

On September 13, 2002,<sup>10</sup> the Commission on State Mandates (Commission) received two test claims from claimant, Santa Monica Community College District, alleging substantially similar (but not identical) test claim legislation and activities on behalf of school district employers of peace officers to the claims originally filed by the City and County. On May 1, 2003, the Commission consolidated all four claims designating them *Peace Officer Personnel Records: Unfounded Complaints and Discovery (00-TC-24)*.

~~The test claim denoted *Unfounded Complaints Against Peace Officers* was filed by the City of Hayward, and the County of San Mateo filed the test claim *Discovery of Peace Officer Personnel Records* on June 26, 2001. The Commission consolidated these test claims on May 1, 2003. These test claims sought reimbursement for compliance with new procedures for discovery of peace officer personnel records and investigation of unfounded complaints against peace~~

<sup>9</sup> Reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

<sup>10</sup> Reimbursement period begins no earlier than July 1, 2001. (Gov. Code, § 17557, subd. (c).)



officers. The test claim was heard on July 31, 2003, and the Commission found that there was a partially reimbursable state mandate for the following new activities:

The Commission heard and decided this test claim during regularly scheduled hearings on July 31, 2003, and September 25, 2003. At the July 31, 2003 hearing, the Commission heard and decided the test claim allegations from the city and county claimants. At the September 25, 2003 hearing, the Commission heard the test claim allegations from the school district claimant.

On September 25, 2003, the Commission adopted the Statement of Decision for *Peace Officer Personnel Records: Unfounded Complaints and Discovery* (00-TC-24). The Commission found that Evidence Code sections 1043, subdivision (a), Penal Code sections 832.5, subdivisions (b) and (c), and 832.7, subdivisions (b) and (e), constitute a new program or higher level of service and impose a reimbursable state-mandated program on local agency employers of peace officers within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514. Accordingly, the Commission approved this test claim for the following reimbursable activities:

- Upon receipt of the notice that discovery or disclosure is sought of peace officer personnel records, the local agency served shall immediately notify the individual whose records are sought. (Evid. Code, § 1043, subd. (a).)<sup>11</sup>
- Retain complaints against peace officers by members of the public, and any reports or findings relating to these complaints, either in the officer's general personnel file or in a separate file, for an additional three years (a higher level of service above the two-year record retention requirement beyond the two-year retention period required pursuant to Government Code, sSections 26202 and 34090). Complaints found to be frivolous, unfounded, or exonerated shall not be maintained in that officer's general personnel file, but shall be retained in other, separate files. (Pen. Code, § 832.5, subds. (b) and (c).)<sup>12</sup>
- Release to the complaining party a copy of his or her own statements at the time the complaint against the peace officer is filed. (Pen. Code, § 832.7, subd. (b).)<sup>13</sup>
- Provide written notification to the complaining party of the disposition of the complaint against the peace officer within 30 days of the disposition. (Pen. Code, § 832.7, subd. (e).)<sup>14</sup>

The Commission concluded that Evidence Code sections 1044, 1045, 1046 and 1047, Penal Code section 832.8, and none of the additional activities or costs claimed for receiving, responding to, or defending against a discovery motion, or investigating complaints against

<sup>11</sup> As amended by Statutes 1978, chapter 630; test claim allegation filed June 29, 2001, reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

<sup>12</sup> As amended by Statutes 1978, chapter 630; test claim allegation filed June 29, 2001, reimbursement period begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

<sup>13</sup> As amended by Statutes 1994, chapter 741; test claim allegation filed September 13, 2002, reimbursement period begins no earlier than July 1, 2001. (Gov. Code, § 17557, subd. (c).)

<sup>14</sup> Ibid.

peace officers, constitute a new program or higher level of service within the meaning of the California Constitution, article XIII B, section 6.

The Commission also found that forming a school district police department and employing peace officers is a discretionary activity on the part of all school districts. Pursuant to Education Code sections 38000 and 72330, school districts remain free to discontinue providing their own police department, and statutory duties that follow from discretionary activities do not impose a reimbursable state mandate. Thus, the Commission concluded that school districts are not eligible claimants for the test claim statutes.

The Commission denied any remaining alleged costs or activities because they do not impose a new program or higher level of service, and do not impose costs mandated by the state.

## **II. ELIGIBLE CLAIMANTS**

Any city, county, and city and county that incurs increased costs as a result of this reimbursable state mandated program is eligible to claim reimbursement of those costs.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557, as amended by Statutes of 1998, Chapter 681 (which became effective on September 22, 1998) states that a test claim shall must be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. The test claims for this mandate were filed on June 29, 2001 and September 13, 2002. Therefore, costs incurred for compliance with Evidence Code section 1043, subdivision (a), and Penal Code section 832.5, subdivisions (b) and (c), are reimbursable, the City of Hayward and County of San Mateo filed their test claims for this mandated program, establishing eligibility for reimbursement beginning on or after July 1, 1999, and costs incurred for compliance with Penal Code section 832.7, subdivisions (b) and (e), are reimbursable on or after July 1, 2001.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1)(A) ~~of the Government Code~~, all claims for reimbursement of initial fiscal years' costs shall be submitted to the State Controller within 120 days of ~~notification by the State Controller of~~ the issuance date for the of claiming instructions.

If the total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code, ~~s~~Section 17564.

## **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, ~~training packets~~ and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is

true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5, based upon personal knowledge.” Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

- A. Administrative Activities Notice to Peace Officers (Evid. Code, § 1043, subd. (a).) Reimbursement period begins July 1, 1999.
- ~~1. Develop internal policies, procedures, forms and manuals to implement the activities of these Parameters and Guidelines, including updating those policies and procedures for the adoption of Chapter 971, Statutes of 2000, and Chapter 63, Statutes of 2002.~~
  - ~~2. Training of officers and staff in the implementation of the activities of these Parameters and Guidelines, including updates necessitated by the passage of Chapter 971, Statutes of 2000, and Chapter 63, Statutes of 2002.~~
  1. Provide providing immediate notice to an officer that his personnel file is the subject of discovery or disclosure.
- B. Peace Officer Personnel Records; Unfounded Complaints and Discovery Record Retention (Pen. Code, § 832.5, subds. (b) and (c).) Reimbursement period begins July 1, 1999.
- ~~2.1. The cost of maintaining Retain complaints against peace officers and any reports on findings relating to these complaints, for an additional the three years, period of time after the mandatory two year retention period provided in Government Code, Sections 26202 and 34090. This is limited to the cost of retaining complaints against peace officers and any reports on findings relating to these complaints, including file storage and cost of retrieval and replacement of those materials records for the three-year period of time after the mandatory two-year retention period provided in Government Code sections 26202 and 34090 during the extended three year period.~~
  - ~~3.2. Maintaining~~ those complaints found to be frivolous, unfounded or exonerated in a file separate from the officer’s general personnel file.
- C. Notice to Complaining Party (Pen. Code, § 832.7, subds. (b) and (e).) Reimbursement period begins July 1, 2001.
- ~~4.1. Making Make~~ a copy of the complaining party’s own statements at the time the complaint against the peace officer is filed, and provid~~ing~~ing the complaining party a copy of that statement. ~~If the original complaint is oral, the cost of transcribing, typing or otherwise making a hard copy of said complaint to be given the complaining party, is reimbursable.~~
  - ~~5.2. Providing Provide~~ written notification to the complaining party of the disposition of the complaint against the peace officer within thirty days of the disposition.

## VI. CLAIM PREPARATION AND SUBMISSION

~~Each reimbursement claim must be timely filed.~~ Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document: Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

~~Eligible claimants may use actual time for all reimbursable components. Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours.) Describe the specified reimbursable activities performed, and the hours devoted to each reimbursable activity performed. A non-statistical time study may be used to fulfill the requirements of this section. If the time study has been performed within three calendar years of the date the claim is filed, it shall be assumed to be correct.~~

### A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

#### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

#### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

#### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. ~~Attach a copy of the contract to the claim.~~ If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of ~~and itemize all costs for those~~ services.

#### 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for

purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

#### 5.Travel

~~Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.~~

#### 6.Training

~~Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate) of the training session, date attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.~~

### C.B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2)

dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>15</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING SAVINGS AND REIMBURSEMENTS**

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim. Service fees collected include cost reimbursements received by counties pursuant to Government Code, Sections 27135, 27013, and 53684, subdivision (b).

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code, ~~s~~Section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement ~~not~~ later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

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<sup>15</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Pursuant to Government Code, sSection 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code, sSection 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code, sSection 17557, subdivision (a), and California Code of Regulations, tTitle 2, sSection 1183.2.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.